NO. 83-374

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JONATHON EARL LOGAN, APPELLANT

V.

THE SUPREME COURT OF THE STATE OF IOWA;
W. W. REYNOLDSON, in his capacity as
CHIEF JUSTICE OF THE SUPREME COURT OF IOWA;
THE BOARD OF LAW EXAMINERS;
MAURICE B. NIELAND, as chairman of the
IOWA BOARD OF LAW EXAMINERS,

APPELLEES.

ON APPEAL FROM THE SUPREME COURT

OF THE STATE OF IOWA

APPELLEES' MOTION TO DISMISS

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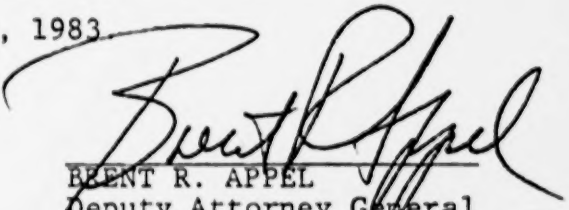
CERTIFICATE OF SERVICE

I hereby certify that I caused three copies of Appellees' Motion to Dismiss to be deposited in first class mail, postage prepaid, to Counsel for the Appellant:

Gary A. Robinson
4717 Grand
Des Moines, Iowa 50312

on September 9, 1983.



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QUESTIONS PRESENTED

1. Whether the Iowa Supreme Court order denying waiver of Court Rule 106 to Appellant, a graduate of a non ABA accredited law school, in order to allow him to sit for the Iowa bar examination, violates due process of law.

2. Whether the Iowa Supreme Court order denying Appellant waiver of Court Rule 106 violates equal protection.

3. Whether the Iowa Supreme Court order denying Appellant waiver of Court Rule 106 violates his right to travel.

4. Whether the Iowa Supreme Court order denying Appellant waiver of Court Rule 106 violates the privileges and immunities clause.

5. Whether the Iowa Supreme Court order denying waiver of Court Rule 106 violates federal anti-trust laws.

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NO. 83-374

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THE SUPREME COURT OF THE STATE OF IOWA;[1]
W. W. REYNOLDSON, in his capacity as
CHIEF JUSTICE OF THE SUPREME COURT OF IOWA;[2]
THE BOARD OF LAW EXAMINERS;
MAURICE B. NIELAND, as chairman of the
IOWA BOARD OF LAW EXAMINERS,

APPELLEES.

APPELLEES' MOTION TO DISMISS

The Appellees hereby move this Court to dismiss the appeal herein on the ground that no substantial federal question is presented.

STATEMENT OF THE CASE

On March 10, 1983, Appellant Jonathon Logan submitted an application to sit for the

Iowa bar examination in June, 1983. His application revealed that he was a graduate of Western State University College of Law, a non ABA accredited law school. The Iowa Board of Bar Examiners entered an order (Appellant's App. B) recommending that the application be denied because applicant failed to meet the requirements of Iowa Court Rule 106, which then stated, in relevant part:

> No person shall be permitted to take the examination for admission without proof that he has received the degree of LL.B. or J.D. from a reputable law school;
>
> . . . A law school fully approved by the American Bar Association or the Iowa Supreme Court shall be deemed a reputable law school.

Appellant appealed the action of the Bar Examiners to the Iowa Supreme Court. Prior to 1981, the Iowa Supreme Court, in its discretion, granted waivers of Rule 106 to graduates of non ABA accredited schools. Court records demonstrate, how-

ever, that the waiver practice was discontinued. See In Re Foytack and Kelly, Iowa Supreme Court, April 9, 1981 (Appellees' App. A). Since that time, no graduate of a non ABA accredited law school has been allowed to sit for the Iowa bar examination.

The record before the Iowa Supreme Court reveals that the Appellant registered his intent to sit for the California bar examination upon his matriculation in law school in 1977. See "Attachment to Law Student Registration Form of Jonathan E. Logan," Appellees' App. B. Upon graduation from law school in 1981, Appellant apparently remained in California. See Residency Affidavit of Jonathan Logan, March 7, 1983 (indicating one-half year Iowa residency with Iowa driver's license issued January 3, 1983). Appellees' App. C. In February 1983, Appellant sat for

the California bar examination. See Addendum to Application of Jonathan Logan, No. 14. Appellees' App. D.

On May 16th, the Iowa Supreme Court, after considering the question en banc, denied Appellant a waiver of Court Rule 106. See Appellant's App. A. Appellant then filed the instant appeal with this Court.

ARGUMENT

I. No Substantial Question is Raised by Appellant's Claim that the Iowa Supreme Court Rule, as Applied to Appellant, Violates Due Process.

A. Appellant Lacks Standing to Assert Entitlement to a "Grandfather" Exception on a Due Process Theory.

Appellant argues that he relied upon the Iowa Supreme Court's past practice of granting waivers of Rule 106 and that, as a result, the more stringent Iowa Supreme Court policy should not be applied to him. Appellant cites two lower

court cases which appear to stand for the proposition that due process requires a "grandfather" clause to prevent undue hardship to professionals or students who rely on previous policy in making educational or professional plans. Berger v. Board of Psychology Examiners, 521 F.2d 1056 (D.C. Cir. 1975), Louis v. Supreme Court of Nevada, 490 F.Supp. 1174 (D. Nev. 1980).

But even assuming arguendo the validity of Appellant's legal contention, Appellant lacks standing to assert whatever due process protection might be available under the theory because the record shows that Appellant did not rely upon Rule 106 in making his educational plans.

Appellant enrolled in the law school at Western State University in 1977. At that time, he registered to sit for the California bar examination. According to Appellant, he did not register for the Iowa bar examination pursuant to Iowa Court Rule 112 because he "was not a resident of Iowa" and "was unaware of the rule requiring registration." See "Attachment to Law Student Registration Form of Jonathan E. Logan," Appellee's App. B. Upon his graduation, he apparently remained in California for two years and in February, 1983, he sat for the California bar. See Addendum of Jonathan Logan, No. 14. Appellant's App. D. Only recently, did Appellant decide to establish residency in Iowa and sit for the Iowa bar. See Residency Affidavit

of Jonathan Logan, March 7, 1983. Appellant's App. C.

As was stated in Louis, supra, the purpose of grandfather clauses is to prevent hardship on applicants who geared their educational programs to then existing conditions, 490 F.Supp. at 1184 (D.Nev. 1980). Under the facts of this case, however, Appellant clearly did not attend Western State University law school with an intent to sit for the Iowa Bar in reliance on Iowa Court Rule 106. He attended with a view to sit for the California bar. Appellant's assertion of a right to be grandfathered in is a post hoc effort to establish a legal basis to force the Iowa Supreme Court to depart from its established policy.

B. The Rule is not Unduly Vague.

This Court has held that non-criminal statutes are not unconstitutionally vague unless the language does not convey sufficiently definite warning as to proscribed conduct when measured by common understanding or practice. See e.g., Arnett v. Kennedy, 416 U.S. 134, 158-64 (1974). Keyishian v. Board of Regents, 385 U.S. 589, 597-604 (1967).

Under this standard as applied in this case, the Iowa Supreme Court Rule 106 passes constitutional muster. The terms of Rule 106 make it unmistakably clear that any attempt to sit for the Iowa bar examination after graduation from a non ABA law school would be extremely perilous, if not totally proscribed. Given the clear warning of the rule, it is not un-

reasonable to expect Appellant at least to inquire as to the application of the rule in contexts similar to his. If such an inquiry had been made, Appellant would have learned that the rule was strictly enforced and that the Iowa Supreme Court discontinued in 1981 its past practice of granting waivers to graduates of non ABA accredited law schools.[1]

Appellant claims to have relied upon the fact that previous graduates of Western State were allowed to sit for the Iowa bar examination. Such

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[1] The strict policy of the Iowa Supreme Court was expressly stated in In Re Foytack and Kelly, Iowa Sup. Ct., Dec. 9, 1981 (Appellee's App. A). Kelly, as admitted by Appellant, was a graduate of Western State University Law School. See Appellant's Jurisdictional Statement at 7-8.

reliance, if it occured, was misplaced. The most recent applicant cited by Appellant was in fact denied permission in an order which expressly stated that waivers of Rule 106 would no longer be granted. See Appellees' App. A. Any reliance Appellant may have placed on his mistaken information was plainly unreasonable.

C. Appellant is not Entitled to Notice and Opportunity to be Heard when Undisputed Facts Demonstrate Lack of Qualification and Where no Vested Property Right is Implicated.

Appellant objects to the lack of opportunity for a hearing before the Iowa Supreme Court. To the extent Appellant questions interpretation of the Court's own rules, the state tribunals' holding is, of

course, dispositive.[2] The only question appropriately before the Court is whether due process requires some kind of hearing given the character of Appellant's interest.

Under the facts and circumstances presented, no such hearing is required. In contrast to moral character cases, like Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963), there are no

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[2] Appellant appears to claim that the Iowa Supreme Court violated Iowa Supreme Court Rule 7(c) which requires notification and an opportunity to file statements of reasons for oral argument in conventional adjudicative cases where the court elects submission without oral argument. The Iowa Supreme Court Rulres, however, have no application where bar admission proceedings are held under Iowa Court Rules. In bar admission matters, the applicable procedural rule is Iowa Court Rule 117.1 (2), which does not require notice of nonoral submission. See Appellees' App. E.

factual controversies here. Appellant merely is mounting a facial challenge to established Iowa Supreme Court precedent refusing to grant waivers to graduates of non ABA approved schools. Due process does not require that a state supreme court grant oral hearings to every disappointed applicant who seeks to change established requirements for admission to the bar. FCC v. WJR, The Goodwill Station, 337 U.S. 265, 274-77 (1949) (due process does not require oral argument on every issue.) See also Davis, Administrative Law, 12:1 (2nd Ed.) (1979) (no evidentiary hearing where no facts in dispute).

II. No Substantial Question is Raised by Appellant's Equal Protection Challenge.

Appellant claims violation of equal protection because past Western State graduates

have been allowed to sit for the bar examination. This contention is without merit. Appellant has not cited, and Appellee has not found, any post 1981 case where the Iowa Supreme Court granted a waiver of Rule 106 to a graduate of a non ABA accredited law school. No case of this Court prohibits a prospective change in policy by responsible authorities in the name of equal protection. To do so would freeze the status quo and prevent decision makers from responding to changes in the legal and political environments. See Dent v. State of West Virginia, 129 U.S. 114, 128 (1889) (state may alter requirements for medical profession).

III. No Substantial Right to Travel or Privileges and Immunities Questions are Raised.

Appellant claims that the Iowa Supreme Court's restrictive approach to bar admissions violates his constitutional right to travel, or, in the alternative, the

privileges and immunities clause. Admittedly, a body of case law in the lower courts does exist which questions residency requirements in the context of bar qualifications in these theories. See Sheley v. Alaska Bar Assoc., 620 P.2d 640, 645-46 (Ala. 1980), Straus v. Alabama State Bar, 520 F.Supp. 173, 179 (N.D. Alabama 1981).

But the Iowa Supreme Court action in this case had absolutely nothing to do with residency or where Appellant lives or has lived or wishes to live. The Iowa Supreme Court policy requiring graduation from an ABA approved law school applies to all applicants regardless of residency, domicile, citizenship, or any other concept that might trigger right to travel or privileges and immunities protections. Because of the non-discriminatory application of the Iowa Supreme Court policy, no constitutional question is present.

IV. No Substantial Anti-Trust Question is Present Because the Iowa Supreme Court Ruling is State Action.

Appellant claims that the policy of the Iowa Supreme Court is a restraint of trade in violation of the Sherman Act, 15 U.S.C. § 1. In Bates v. Arizona, 433 U.S. 350, 361-62 (1977), this Court held that rules and policies specifically adopted by a state supreme court, acting as sovereign, reflect a clear and affirmative articulation of state policy. As a result, the action of the Iowa Supreme Court is not within the scope of anti-trust laws, Parker v. Brown, 317 U.S. 341, 359-61 (1943).

CONCLUSION

Because no substantial federal question is presented here, the appeal should be dismissed.

Respectfully submitted,

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ATTORNEYS FOR APPELLEES

APPELLEES' APPENDIX A

IN THE SUPREME COURT OF IOWA

(Filed 4/9/81)

IN THE MATTER OF THE APPLICATIONS OF ROBERT G. FOYTACK AND NANCY E. KELLY TO TAKE THE JUNE, 1981 IOWA BAR EXAMINATION.	ORDER

Robert G. Foytack and Nancy E. Kelly were denied permission to take the June, 1981 bar examination by the Iowa Board of Law Examiners for the reason that the law school they attended, Western State University College of Law, is not a law school fully approved by the American Bar Association as required by Court Rule 106. Applicants Foytack and Kelly now seek the court's permission to sit for the June, 1981 bar examination.

Western State University College of Law, San Diego, is not a law school fully approved by the American Bar Association or the Iowa Supreme Court. This court

has ended its practice of granting a waiver of this requirement under any circumstances.

It is therefore ordered that the applications of Robert G. Foytack and Nancy E. Kelly to take the June, 1981 bar examination are denied for failure to meet the requirements of Court Rule 106.

Done this 9th day of April, 1981.

THE SUPREME COURT OF IOWA

BY /s/
W. W. REYNOLDSON
Chief Justice

APPELLEES' APPENDIX B

ATTACHMENT TO LAW STUDENT REGISTRATION FORM OF JONATHON E. LOGAN

TO: The Iowa Board of Law Examiners;

May it please the Committee: I respectfully request a waiver of Iowa Court Rule 112 which states in pertinent part:

> (1) Every person intending to apply for admission to the bar of this state by examination shall, within sixty days following the commencement of law

> the study of law in an accredited law school, register with the Iowa board of law examiners . . .

At the time of the commencement of my study of law, I was not a resident of the State of Iowa. I therefore, was unaware of the rule requiring registration. As a resident of California, and a student of an accredited law school in California, I did comply with the rules and regulations regarding the registration of law students in the State of California.

* * *

/s/
JONATHAN E. LOGAN

APPELLEES' APPENDIX C

RESIDENCY AFFIDAVIT

* * *

I have been an inhabitant of Iowa for 1/2 years.

I possess an Iowa Drivers License #552-82-1652, issued 1/3/83.

I drive an automobile licensed in Woodbury County, Iowa.

I lasted voted on n/a in _____ County, Iowa.
I have not yet voted but am registered in Woodbury County, Iowa.

APPELLEES' APPENDIX D

Addendum to Application, Jonathon E. Logan

* * *

Number 14.

I sat for the California State Bar Examination in February 1983, results will be announced approximately June 1, 1983.

APPELLEES' APPENDIX E

Iowa Court Rule 117.1(2):

ADMISSION TO THE BAR

* * *

(2) Any applicant aggrieved by the final action of the Iowa board of law examiners in refusing to recommend to the supreme court of Iowa, the admission of the applicant to practice law in Iowa, for any reason other than the failure to pass the examination as set forth in paragraph (1) may, within twenty days of such final determination by said board, file a petition with the supreme court of Iowa requesting

a review by said court of such final determination. Said petition shall set forth therein specifically the reasons, in fact or law, assigned as error in the board's determination. The court may order further consideration of the application. On receipt of such an order, the chairman of the board of law examiners shall promptly transmit to the court the complete file relating to such applicant and his application, including the transcript of the record of any hearing held by the Iowa board of law examiners relating thereto. Thereafter, the court shall enter such order as in its judgment is proper. Said order shall thereupon become final, without further review or appeal.